

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL W. GOSCHA

Claimant

VS.

U.S.D. NO. 260

Respondent

AND

KANSAS ASSOCIATION OF SCHOOL BOARDS

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 186,387

ORDER

On August 24, 1995, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on March 17, 1995, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, James B. Zongker of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Anton C. Andersen of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Marvin R. Applying of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What, if any, is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, including the arguments of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant suffered accidental injury on August 21, 1993, and, after returning to work at light duty was again injured on September 21, 1993, with both injuries being to his low back. Claimant was treated by several doctors, three of whom testified in this matter. Dr. Mark N. Vinzant, a family practitioner, examined claimant initially on August 20, 1993. After a course of conservative care, treatment was taken over by Dr. Ely Bartal, a board-certified orthopedic surgeon. Dr. Bartal first saw claimant on March 7, 1994, diagnosing residual pain over the SI joint, inflammation, and arthritic changes of the lumbosacral spine. He rated claimant at 3 percent to the body as a whole, functionally. He did restrict claimant to lifting 30 pounds with no repetitive bending, stooping, or squatting.

Dr. Vinzant had earlier placed restrictions upon claimant but these restrictions were rejected by the Administrative Law Judge as they came as a result of an examination performed by Dr. Vinzant's assistant and not by the doctor himself. The Administrative Law Judge accurately felt that Dr. Vinzant's opinion, in this regard, was suspect.

Claimant was examined by Dr. Ernest R. Schlachter on November 18, 1993. Dr. Schlachter diagnosed chronic lumbosacral sprain with aggravating preexisting arthritis to the lumbar spine. Dr. Schlachter assessed claimant a 15 percent permanent partial whole body functional impairment and restricted claimant from repetitive lifting of more than 20 pounds and single lifting of more than 30 pounds. He also prohibited claimant from repetitive bending, twisting, or working in awkward positions and recommended claimant have a job where he could sit part-time and stand part-time. The Administrative Law Judge, in awarding claimant a 9 percent functional impairment to the body as a whole, accurately assessed the opinions of both Dr. Schlachter and Dr. Bartal, finding one to be

too liberal and one to be too conservative. The 9 percent functional rating accurately reflects the functional impairment suffered by claimant as a result of his injuries.

In considering what, if any, work disability claimant may be entitled to, the Administrative Law Judge cited the case of Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995). In Foulk, the Court of Appeals found that the Workers Compensation Act should not be construed to award benefits to a worker for refusing a proffered job which the worker has the ability to perform. In this instance, claimant was offered a locksmith job by respondent which would have paid more than a comparable wage to that which claimant was earning at the time of his injuries. The Administrative Law Judge found claimant's refusal to accept this offered position to be unacceptable in light of the logic set forth in Foulk. The Appeals Board agrees and grants claimant a 9 percent whole body functional impairment as a result of the injuries suffered on August 21 and September 21, 1993.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated March 17, 1995, should be, and is hereby, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Daniel W. Goscha, and against the respondent, USD 260, and its insurance carrier, Kansas Association of School Boards, and the Workers Compensation Fund, for accidental injuries sustained on August 21 and September 21, 1993, and based upon an average weekly wage of \$354 for 24.7 weeks of temporary total disability compensation at the rate of \$236.01 per week or \$5,829.44, followed by 36.47 weeks of permanent partial general body disability at the rate of \$236.01 per week or \$8,607.28, for a 9% permanent partial general body disability, making a total award of \$14,436.72.

As of October 22, 1996, the entire sum would be due and owing minus amounts previously paid.

All additional findings in the Award issued by the Administrative Law Judge not appealed to the Workers Compensation Appeals Board are affirmed insofar as they are not in contradiction to the opinions expressed herein.

Medical expenses incurred by claimant as a result of his accidental injury shall be assessed to respondent and the Fund as set forth in the Award of the Administrative Law Judge.

The fees necessary to defray the expenses of the administration of the Workers Compensation Act are hereby assessed against the respondent and the Fund 50% to each to be paid directly as follows:

Barber & Associates	
Transcript of Regular Hearing	\$253.00
Deposition of Ernest R. Schlachter, M.D.	\$226.00
Deposition of Jerry D. Hardin	\$257.60
Deposition of Karen Crist Terrill	\$179.00
Transcript of Preliminary Hearing	\$ 70.40
 Deposition Services	
Deposition of Ely Bartal, M.D.	Unknown
Deposition of Thomas Y. Hightower, Ed.D.	\$202.40
 Ireland Court Reporting	
Deposition of Mark N. Vinzant, M.D.	\$245.10

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Anton C. Andersen, Kansas City, KS
Marvin R. Appling, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director